

DEVELOPMENT SERVICES DEPARTMENT

Planning & Zoning Division

MEMORANDUM
PZ 07-15-99

TO: Robert Rawls, Interim Town Administrator

FROM: Mark A. Kutney, AICP, Development Services Director

DATE: July 9, 1999

RE: Revised Code Compliance Mitigation Guidelines

On April 7, 1999 Town Council reviewed and approved a resolution requesting mitigation of a Code Compliance lien pertaining to Discount Auto Parts. During deliberation on this matter, Town Council expressed concerns regarding the degree of reduction in mitigating such fines and directed staff to review the present guidelines.

Since the aforementioned meeting, staff has reviewed the present mitigation guidelines and also investigated the manner in which several other jurisdictions handled the mitigation of code compliance fines. Staff research led to the following conclusions:

1. Based upon the Town's current mitigation guidelines, an amendment is in order; and
2. Based upon the other jurisdictions sampled, there was no consistent or accepted procedure for handling mitigations. There was a great deal of variance relative to how these jurisdictions treated the issue. In short, it is appropriate for the Town to address this issue as desired, pursuant to state law.

Therefore, staff is recommending new mitigation guidelines contained in this correspondence. In developing these new guidelines, staff contemplated three considerations that are presented below for Town Council deliberation.

First, pursuant to F.S. 162.09(3) "A lien arising from a fine imposed pursuant to this section runs in favor of the local governing body, and the local governing body may execute a satisfaction or release of lien entered pursuant to this section." From this provision it is clear that the Town may deal with the reduction or satisfaction of a lien and/or a fine. An Attorney General opinion also supports this position.

Second, the general intention of F.S. Chapter 162, County or Municipal Code Compliance was promulgated with the primary purpose of achieving code compliance and to promote, protect and improve the general safety and welfare of its citizens. The Code Compliance process was not intended to be punitive or designed to be a revenue enhancing process.

Third, staff is of the opinion that Town Council is still open to mitigation of fines but interested in ensuring that a greater percentage of the fine is imposed to cover Town costs and to serve as a deterrent for future code violators. Amendments to F.S. 162 over the last decade move toward this position with repeat violators amendments as an example.

With consideration of all factors considered above, staff is recommending a new schedule that provides consideration for the amount of the fine/lien, the time expended to achieve compliance and reimbursement of Town costs and expenses in administration of the case. It should be noted that the code compliance case processing expenses are currently being examined to ensure that most expenses have kept pace with cost increases. Indicated below is the recommended revised schedule and an old schedule is provided as attachment "A" for comparison purposes.

FINE AMOUNT

RECOMMENDATION

Fine to \$10,000.

2.5% of the amount plus an additional 2% for each sixty (60) days of violation plus actual costs incurred by the Town.

\$10,001 - \$ 20,000.

5.0% of the amount plus an additional 2% for each sixty (60) days of violation plus actual costs incurred by the Town.

\$20,001 - \$ 30,000.

7.5% of the amount plus an additional 2% for each sixty (60) days of violation plus actual costs incurred by the Town.

\$30,001 - \$ 40,000.

10.0% of the amount plus an additional 2% for each sixty (60) days of violation plus actual costs incurred by the Town.

\$40,001 - \$ 50,000.

12.5% of the amount plus an additional 2% for each sixty (60) days of violation plus actual costs incurred by the Town.

\$50,001 - \$ 60,000.

15.0% of the amount plus an additional

	2% for each sixty (60) days of violation plus actual costs incurred by the Town.
\$60,001 - \$ 70,000.	17.5% of the amount plus an additional 2% for each sixty (60) days of violation plus actual costs incurred by the Town.
\$70,001 - \$ 80,000.	20.0% of the amount plus an additional 2% for each sixty (60) days of violation plus actual costs incurred by the Town.
\$80,001 - \$ 90,000.	22.5% of the amount plus an additional 2% for each sixty (60) days of violation plus actual costs incurred by the Town.
\$90,001 - \$ 100,000.	25.0% of the amount plus an additional 2% for each sixty (60) days of violation plus actual costs incurred by the Town.
over \$ 100,000.	30.0% of the amount plus an additional 2% for each sixty (60) days of violation plus actual costs incurred by the Town.

This schedule would be utilized for first time violators and repeat violators.

As the above represents a guideline, staff would do a computation based upon the guidelines above and Town Council would review the particulars in determining whether or not further reductions were in order due to a hardship or some other mitigating reason. Staff believes the schedule above, provides a fair and equitable mitigation schedule, allows for Town cost recovery and sends an enforcement message to potential/prospective violators.

RECOMMENDATION: Staff recommends that Town Council authorize staff to utilize the proposed schedule included herein as the new mitigation guidelines for the Town.

EXHIBIT "A"

STAFF MITIGATION GUIDELINES

<u>FINE AMOUNT</u>			<u>RECOMMENDATION</u>
Fine	to	\$ 10,000	\$ 800 to \$1,000
\$10,001	to	\$ 20,000	\$ 2,000
\$20,001	to	\$ 30,000	\$ 4,000
\$30,001	to	\$ 40,000	\$ 6,000
\$40,001	to	\$ 50,000	\$ 8,000
\$50,001	to	\$ 60,000	\$10,000
\$60,001	to	\$ 70,000	\$12,000
\$70,001	to	\$ 80,000	\$14,000
\$80,001	to	\$ 90,000	\$16,000
\$90,001	to	\$100,000	\$18,000

The above guidelines are considered by the Town's staff in the formulation of the staff recommendation to the Town Council. The actual recommendation may be more or less than the guidelines, depending upon the particular circumstances of each case. In no event will the recommendation be less than the actual costs incurred by the Town in the prosecution of the case.

EXHIBIT "A"

**STAFF MITIGATION GUIDELINES
FOR REPEAT VIOLATIONS (COMMERCIAL)**

FINE AMOUNT

MITIGATION AMOUNT

Fine	to	\$ 10,000	20% reduction of original amount
\$ 10,001	to	\$ 20,000	20% reduction of original amount
\$ 20,001	to	\$ 30,000	20% reduction of original amount
\$ 30,001	to	\$ 40,000	20% reduction of original amount
\$ 40,001	to	\$ 50,000	20% reduction of original amount
\$ 50,001	to	\$ 60,000	20% reduction of original amount
\$ 60,001	to	\$ 70,000	20% reduction of original amount
\$ 70,001	to	\$ 80,000	20% reduction of original amount
\$ 80,001	to	\$ 90,000	20% reduction of original amount
\$ 90,001	to	\$100,000	20% reduction of original amount
\$100,001	to	\$110,000	20% reduction of original amount

The above guidelines are considered by the Town's staff for presentation to the Special Master for recommendation to the Town Council. The Special Master may approve recommendation of the designated mitigation amount to the Town Council or deny mitigation depending upon the particular circumstances of each case. In no event will the recommendation be less than the amount designated for repeat commercial code violations.